

REMARKS

This Second Supplemental Amendment After Final is being submitted in response to the Advisory Action of October 17, 2003 and at the request of Supervisory Patent Examiner Amy Nelson and puts the claims in form for allowance as suggested by Supervisory Patent Examiner Amy Nelson on November 7, 2003.

The present application relates to inbred maize line 34M94. Claims 68-82 are currently canceled in response to the Examiner's statements that these claims "are deemed to be directed to a new, distinct method and products non-elected by the original presentation". Claims 5-62 were previously canceled in the Supplemental Amendment After Final filed on September 25, 2003, claims 5-8, 20, 33, and 42-62 were previously canceled in the Amendment After Final filed September 2, 2003 and claims 9-19, 21-32, and 34-41 were previously canceled in the Amendment of March 27, 2003.

Applicant would like to reiterate that the actual ATCC deposit will be delayed until receipt of notice that the application is otherwise in condition for allowance. As provided in 37 C.F.R. §§ 1.801-1.809, Applicant wishes to reiterate they will refrain from deposit of hybrid maize plant 34M94 and the inbred parents GE568044 and GE538486 until allowable subject matter is indicated. Once such notice is received, an ATCC deposit will be made, and the specification will be amended to contain the accession number of the deposit, the date of the deposit, description of the deposited biological materials sufficient to specifically identify and to permit examination and the name and address of the depository. The claims will also be amended to recite the proper ATCC deposit numbers. The Applicant provides assurance that:

- a) during the pendency of this application access to the invention will be afforded to the Commissioner upon request;
- b) all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent;
- c) the deposit will be maintained in a public depository for a period of thirty years, or five years after the last request for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit will be conducted (see 37 C.F.R. § 1.807); and
- e) the deposit will be replaced if it should ever become inviable.

Therefore, Applicant submits at least 2500 seeds of hybrid maize plant 34M94 and the inbred parents GE568044 and GE533486 will be deposited with the ATCC.

Applicant respectfully submits all of the changes in this Second Supplemental Amendment After Final do not add new matter as there is support for the claims in the originally filed specification as stated in the Amendment After Final submitted on September 2, 2003. Entry of this Second Supplemental Amendment After Final and approval of the changes is respectfully requested.

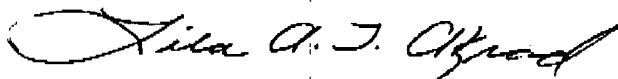
Applicant acknowledges that claims 1-4, 63-67, 83, and 91 are allowed. Applicant further acknowledges that claims 84-90 have been agreed upon as allowable by Supervisory Patent Examiner Amy Nelson as aforementioned, thereby placing these claims in form for allowance. Applicant has canceled all non-allowable claims thereby placing the application in condition for allowance and has complied with all requirements of form set forth in previous office actions.

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

This is a request under the provision of 37 CFR § 1.136(a) to extend the period for filing a response in the above-identified application for two months from October 2, 2003 to December 2, 2003. A request for an extension of time from September 2, 2003 to October 2, 2003 was previously filed with the Supplemental Amendment After Final filed September 25, 2003. Applicant is a large entity; therefore, please charge Deposit Account Number 26-0084 in the amount of \$840.00 for a three month extension of time minus the one month previously paid. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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